



15 April 2024

Submission to the Public Inquiry on Foreign Interference

Dear Commissioner:

Thank you for the opportunity to make a submission in response to the April 2024 hearings. I would like to express my gratitude to the Commission for the care and diligence that has been put into the Inquiry, and for the professionalism with which your team has conducted itself.

Canadians are eagerly awaiting your Phase 1 report on the question of whether foreign interference (FI) occurred in the 2019 and 2021 federal elections (GE43 and GE44 respectively) and what impacts any interference may have had on the integrity of those elections. As a result of numerous reports in the media about alleged FI in GE43 and GE44, the public is understandably confused about whether the results of those elections can be trusted – both at the riding level as well as nationally. Some Canadians, including senior members of the political class, have expressly cast doubt on the election results in as many as 13 ridings in the 2021 election – due to alleged FI. These are extremely serious claims that require a clear and unequivocal resolution from the Commission.

The testimony of the last two weeks has, in my opinion, provided such clarity. We heard from the independent agencies and ad hoc groups tasked with monitoring the conduct of GE43 and GE44, namely Elections Canada, the Office of the Commissioner of Canadian Elections, the SITE Task Force, and the Panel of Five. We also heard from the constituent bodies of the SITE Task Force (RCMP, CSIS, CSE, and GAC) that are

responsible for tracking, and responding to, FI outside of an election. All the above have confirmed that while there was FI during both elections, none of it rose to the level that affected the outcomes of those ballots -- both at the riding level and for the country as a whole. The testimony of the Panel of Five, which had the most direct and immediate responsibility for tracking and responding to FI during the election – in real time – concluded that the elections were “free and fair”.

For many participants in the Inquiry who believe otherwise, this conclusion will be unwelcome. Such a conclusion will also be unwelcome to the media outlets that published the anonymous and unverified allegations of electoral foreign interference because of the journalistic reputations at stake. They will be joined by Canadians who may be conspiracy-minded and skeptical of government and “elites”.

During the inquiry and well before all the testimony was heard, some of these groups have tried to cast doubt on the Commission itself, fearing that it might reach a conclusion that does not conform to their preconceived beliefs. There is every reason to expect that they will continue to cast doubt on the Phase 1 report of the Commission if in fact the findings run contrary to what they are hoping for.

It is of course the right of Canadians to be skeptical and to not accept the findings of an independent public inquiry. Canadians also have every right to debate the findings of the inquiry. Which is why it is important for the Commission to offer as much clarity as possible on the central question of whether the elections of 2019 and 2021 were conducted in a manner that was broadly “free and fair” at both the riding level and nationally. If the Commission concludes in the affirmative, I believe it must also firmly close the door on theories, suspicions, and insinuations that this finding cannot be trusted. To not do so would allow for lingering doubts about the integrity of GE43 and GE44 and undermine trust and confidence in our democratic system.

My submission will touch on some of the theories, suspicions and insinuations that seek to undermine the topline finding of our election monitoring and intelligence/law

enforcement bodies, which is that the results of GE43 and GE44 were not materially affected by FI, either at the riding level or nationally. During the recent hearings, three lines of argument have been floated to challenge the topline finding. I will address each of these in turn:

- 1. That the threshold for notifying Canadians about FI was too high, and that if the Panel of Five had issued statements alerting constituents/political parties about specific FI intelligence it received from SITE TF, the election results may have been different. A variation of this view is that the Panel of Five had a “bias towards inaction” which allowed FI to take place unhindered in certain ridings.**

A SITE TF document (CAN003781) states that “the People’s Republic of China (PRC) sought to clandestinely and deceptively influence Canada’s 2021 federal election”. It provided two concrete examples:

SITE TF also observed online/media activities aimed at discouraging Canadians, particularly of Chinese heritage, from supporting the Conservative Party of Canada (CPC), Erin O’Toole, and particularly former Steveston-Richmond East candidate Kenny Chiu in GE44.

O’Toole and Chiu are the two most prominent examples of FI from the PRC specifically identified in intelligence reports on GE44. The two cases were examined extensively in the hearings. The argument that the Panel of Five should have employed a lower threshold to share specific intelligence about FI would therefore apply principally to these two cases and should be examined in context.

The same SITE TF report goes on to state:

While we do not have clear evidence that this online activity was a PRC-directed FI campaign, we have observed indicators of potential coordination between various

Canada-based Chinese language news outlets as well as PRC and CCP news outlets.

In other words, SITE could not confirm if the two examples of online/media activities constituted FI and if they could be attributed to a foreign state.

It is not even clear that the two sets of social media posts constitute misinformation, let alone disinformation. Mr Toole's position as a China "hawk" was well known long before the election. For example, he asserted during the 2021 election campaign: "I am the only candidate with a plan to reset Canada's relationship with the Chinese regime. . . ." and that "the world (is) on the brink of a new cold war with another repressive regime, this time in China"¹. The Conservative Party's election platform for GE44 mentioned "China" 31 times in a negative light, including the idea that Canada should "decouple" from China in certain supply chains. A Globe and Mail article published on 24 August 2020 was headlined "*In Selecting Erin O'Toole, Conservatives elevate hawkish voice on China*".

There are many other examples of media and think tank reports on the Conservative Party's hawkish turn towards China under the leadership of Mr O'Toole, all of which were published well before the appearance of the offending social media posts ² during GE44.

¹ <https://rabble.ca/politics/canadian-politics/why-are-you-so-obsessed-china-erin-otooles-fixation-explained/>

² <https://www.theglobeandmail.com/world/article-in-selecting-erin-otoole-conservatives-elevate-hawkish-voice-on/> There are many other examples of Canadian media and think tank reporting on the "hawkish" position of Mr O'Toole. See also <https://nationalpost.com/opinion/terry-glavin-otooles-policy-on-china-is-getting-a-thumbs-up-from-pro-democracy-activists>
<https://www.scmp.com/news/china/politics/article/3098936/canadas-china-critic-takes-helm-opposition-party-trudeau-seeks>
https://www.ualberta.ca/china-institute/news/the-latest/2021/september/china_party_platforms.html
<https://natoassociation.ca/dragon-slayer-the-partial-foreign-policy-of-erin-otooles-conservative-party/>
<https://www.vice.com/en/article/z3x5vj/canada-china-relationship-conservatives-otoole-liberals-trudeau>
<https://rabble.ca/politics/canadian-politics/why-are-you-so-obsessed-china-erin-otooles-fixation-explained/>
<https://nationalpost.com/news/politics/chinese-canadian-tories-urge-otoole-to-resign-saying-tough-on-china-platform-alienated-voters>

In the case of Mr Chiu, it is also unclear if the offending posts are examples of disinformation. I have argued in Policy Options³ that the WeChat posts reflect genuine concerns in the Chinese community and that they should be understood as lay interpretations of a private member's bill that had not undergone any serious scrutiny in parliament. I address the O'Toole and Chiu claims more deeply in my submission to the Commission dated 6 Feb 2024, available at <https://senatoryuenpauwoo.ca/en/domestic-outreach/public-inquiry-on-foreign-interference-2024/submission-concerning-allegations-of-foreign-interference-against-mr-erin-o-toole-and-mr-kenny-chiu-during-the-44th-general-election/>

To suggest that the Panel of Five should have used a lower threshold to justify making a public statement on these two specific pieces of intelligence is to suggest that the Panel should intervene in an election with a claim that could not be verified as FI or even as mis- or dis-information.

It is not only that such an action would call into question the Panel's impartiality, thus undermining its overall credibility; it is also that doing so would stigmatize Canadians who associate with the views expressed in the social media posts. Even if the Panel of Five were to caveat their public announcement with words like "possible" or "potential" FI and disinformation, the effect on political debate would be severe. Such an announcement would have created a chill on criticism of Mr O'Toole's China policy and Mr Chiu's private member's bill, which would be antithetical to the very purpose of a democratic election.

It should also be noted that this chill would fall disproportionately on Chinese Canadians, for whom the issues at hand matter most deeply. This is germane since there were numerous other cases of mis or dis-information during GE43 and GE44⁴ that

³ <https://policyoptions.irpp.org/magazines/january-2022/election-disinformation-claims-and-kenny-chius-richmond-riding/>

⁴ https://www.mcgill.ca/maxbellschool/files/maxbellschool/meo_election_2021_report.pdf see Chapter 3

one might also consider as being worthy of disclosure by the Panel of Five, using a “lower threshold”. The focus on alleged mis- and dis-information concerning issues that mostly affect Chinese Canadians, to the exclusion of many other cases of disinformation of greater material significance, is troubling to say the least.

As it turns out, Mr Chiu’s private member’s bill died on the Order Paper before the 2021 election, which means that a bill along those lines could again become a live issue ahead of the next election. If the Panel of Five had publicly flagged in 2021 the social media content concerning Mr Chiu’s bill, what would that mean for the ability of Canadians to debate a similar bill in the next election?

Therefore, to the extent that the Panel of Five had a “bias towards inaction”, it was a bias towards protecting democratic rights in an election. This is a vital point that seems to have been lost on the many voices in favour of fully and publicly disclosing the information collected by our security and intelligence agencies and having them act on the information. I will take up this issue in the next section.

2. That even if specific acts of FI cannot be verified, the agencies should have done something about the broader “foreign influence” activities by proxies that are said to have taken place in certain ridings.

Another line of criticism against the topline finding of a free and fair election in 2019 and 2021 is the view that the bodies responsible for elections and election FI monitoring, as well as the agencies that have ongoing responsibility for countering FI, should have acted on the broader set of “foreign influence” activities that affect democratic participation outside of an election. This is a variant of the “lower threshold” argument in that it too calls on a less stringent standard for decisive action to be taken by the responsible authorities. It differs, however, in that the actions sought would apply not just to identified cases of FI, but to more broadly defined “foreign influence”, including actions against Canadians and Canadian organizations deemed to be proxies of a foreign government. The argument essentially is that by focusing on interference from

foreigners and foreign states, the agencies overlooked interference from Canadians who were acting as their proxies.

It is not conceivable that our security and intelligence agencies would be oblivious to Canadian proxies acting on behalf of foreign states, and hence omit them from scrutiny. If the agencies have been slow in taking actions against identified proxies, it is likely because the alleged FI by proxies is not illegal. Asserting that someone or some organization is a proxy of a foreign state does not make that person or organization a proxy, much less prove that illegal acts have taken place.

Beyond “threat reduction measures” that are conducted from time to time by the RCMP and CSIS, the scope for addressing what some people consider to be unacceptable foreign influence activities by proxy is limited not only by what the Criminal Code permits, but also by what the Charter of Rights and Freedoms protects. It is not just that the authorities cannot act against legal activity; it is also that Canadians have rights of freedom of expression and freedom of association that must be actively defended.

Hence, while a politician may bemoan ostracization from certain community events because of their views on certain issues in China, the private organizers of those events cannot be denied the right to hold views in opposition to the politician, or the right to not invite any given politician to events that they organize. Likewise, if certain newspapers (including ethnic media) take a certain view on issues in China, they should be able to do so without the stigma of being labeled as a proxy of a foreign government. The gratuitous labeling of Canadians as foreign proxies usually boils down to a litmus test of foreign interference based on a person’s views, rather than on any evidence of actual FI.

We should not tolerate FI, including coercive, corrupt, and covert acts that are illegal and which are against the interests of Canada. But in the absence of evidence, we should fiercely defend the right of private citizens to hold a diverse set of views and to not associate with people whose views they are uncomfortable with.

Imagine a situation where the police or an intelligence agency suspect FI in a community organization and issues a warning to the organization requiring them to invite certain politicians to their events. Can politicians henceforth call on the authorities to ensure that they get invitations to the events they seek to attend? Will members of those organizations no longer be able to hold views that are contrary to politicians that complain about them? Should the police or our intelligence agencies be in the business of adjudicating political views?

Politicians do not have an inalienable right to the affections of their constituents. In a democratic election, the right to vigorously contest different points of views (even to the point of misinformed disagreement) must be protected over the illiberal impulse of stigmatizing voters with the “wrong” views and labeling them as foreign proxies, based on little more than innuendo and suspicion.

And yet, the danger of innuendo and suspicion was on full display in the recent set of hearings, with witnesses casually mentioning the names of specific individuals and organizations who were cast as proxies of a foreign government, without evidence. We even heard about an individual at a Zoom campaign event who was described as “pro PRC-government” because he had a “discernable Mandarin-inflected accent” and asked questions about the politician’s role in fostering anti-Asian racism⁵. This individual asserted that “the Conservative Party's policy on China was blindly following US policy” and asked the politician “if he thought Canada should have its own independent foreign policy”. While these may be uncomfortable questions, they fall well within the range of political debate, especially during an election campaign. To cite the example of a person with a “Mandarin-inflected accent” asking questions at a Zoom meeting as a possible case of FI is both a sign of public hysteria on PRC FI in Canada and a palpable example of stigmatization.

⁵ WIT0000018

Part of the problem stems from the way that our security and Intelligence agencies have articulated the FI threat from the PRC. They have on the one hand defined the threat in extremely broad terms⁶, and on the other hand provided extremely limited information on specific threats. In the context of GE43 and GE44, the two most prominent examples of PRC-related FI mentioned in the documents that have been made public are the Erin O’Toole and Kenny Chiu cases discussed above. And even in those two specific cases, the SITE Task Force could not definitively ascribe the problematic social media posts to a foreign government.

In a submission to the Inquiry dated 4 March 2024, I discuss the risk of systemic discrimination in addressing potential FI in Canada’s democracy due to a vague and very broad framing of the threat from the PRC. The submission may be found at <https://senatoryuenpauwoo.ca/en/domestic-outreach/public-inquiry-on-foreign-interference-2024/submission-on-the-risk-of-systemic-discrimination-in-addressing-potential-foreign-interference-in-canada-s-democracy/> . I hope the Commission will take up some of these issues in the second phase of the inquiry.

3. That the agencies charged with monitoring the election for foreign interference were deficient in their mandates/actions or could not be fully trusted to be independent of the government

The laziest argument against the topline finding of a free and fair election in 2019 and 2021 is that the individuals and agencies responsible for monitoring election FI did not carry out their jobs properly or were unable to do so.

No one would claim that the current system of election FI monitoring is perfect, least of all the officials responsible for the relevant agencies and bodies. It is therefore highly

⁶ CAN00581 describes PRC interference as “sophisticated, pervasive, and persistent”, and operating in a “legal and normative grey zone”. The document claims that the PRC targets “all levels of government (including provincial and municipal levels), in addition to various facets of Canadian society, including vulnerable diaspora groups, media entities, dissidents, activists, elites, elected officials, and academics”.

probable that there can be improvements to election FI monitoring, including the flow of information from officials to the political class. I very much hope the Commission will be able to identify areas of possible improvement, not just in ensuring the integrity of our elections and combatting foreign interference, but also in defending the results of elections against irresponsible and unfounded claims.

To use the argument of an imperfect system to cast doubt on the results of GE43 and GE44, however, is cynical and not supported by the evidence. Even worse is the innuendo directed at the independence and impartiality of the members of the Panel of Five, who are very senior public servants with decades of service under governments of different political stripes.

Some witnesses have tried to argue that if our intelligence agencies had “looked harder” for FI during GE43 and GE44, they would have found it. This is impossible to disprove, and it is always the case that one could have worked harder at any given task, even if the corresponding result may not be commensurate with the increase in effort. The most that can be said of this argument is that individuals and groups that have information about “hard to find” FI can share that information with our security and intelligence agencies, and in many cases, they have done so. That the agencies are not able to confirm that the information received was in fact FI *may* mean that they did not look hard enough, or it may – more likely – mean that it simply was not FI.

A curious variant of this argument is the suggestion that FI from some states, particularly the PRC, is so subtle, so inaccessible, and so sophisticated that our agencies do not have the ability to detect it in the first place. If that is true, then those who make such claims and who are not security and intelligence experts, would have even less capacity to detect FI, and hence are in no position to comment on how difficult it might be to do so.

This kind of argument is extremely dangerous because it opens the door to a belief in unseen and unknown threats that can be alleged to be hiding in all corners of society.

The corollary is the argument that extraordinary measures must be taken to root out such hidden threats, even at the expense of civil liberties. We went down this road during the period of anti-communist cold war hysteria, and it was not pretty. Unfortunately, the way in which our security and intelligence agencies have characterized FI has not been helpful, since they have allowed for a sweeping definition of the PRC FI threat while providing very few specific examples of what they mean.

What is at Stake?

I have already stressed the importance of a clear conclusion from the Commission about the question of whether GE43 and GE44 were free and fair, at both the riding level and for the election as a whole. The topline conclusion of the responsible election agencies is that while there was FI in both elections, the results of the elections – across all ridings – can be trusted. My submission has attempted to address what I believe are some of the main efforts to muddy this topline conclusion.

If such efforts succeed, the result will not simply be that there are differences of opinion among Canadians; it will be that the results of as many as 13 ridings in the 2021 election may be seen by many to be illegitimate. This will be made worse by politicians who give credence to such doubts and by members of the media who have staked their reputations on sowing doubt. A muddy conclusion will only embolden the growing tide of election denialism in Canada.

It is no defense to claim that expressing doubts about the results of just a handful of ridings does not rise to the level of Trumpian denialism and is therefore benign. Even if a different result in six to nine ridings in 2021 would not have changed the overall election outcome, as the argument goes, the very claim that these ridings were lost because of FI is profoundly corrosive to our democracy. If FI materially affected the results of an election, Canadians need to know as such. But if it did not, Canadians need to be fully disabused of their suspicions. We may not be dealing with a “Big Lie”,

as in the United States, but small lies can add up very quickly and the ensuing loss of trust in the system is very difficult to restore.

Missing Voices

I have stressed throughout my submission the importance of protecting the democratic rights of all Canadians to hold a diversity of views on political issues, and not to stifle debate on contentious issues, especially during an election. This is the principle behind the “high threshold” set by the Panel of Five, and it is well founded.

Throughout the inquiry, however, we have heard pleas from groups who seek to label views they do not agree with as examples of FI and to label Canadians who hold those views as proxies of the Chinese state. Some participants have smeared fellow participants as foreign agents or proxies and sought to have them removed from the inquiry. Witnesses thundered their indignation that the government did nothing to act against foreign agents and proxies, as if the mere labelling of someone as an agent or proxy was proof of such. This was made worse by the self-privileging of concerns around human rights issues in China over the rights of Canadians with respect to freedom of expression, freedom of association, and due process. This is not to downplay human rights abuses in the PRC or to minimize the suffering of Canadians who are victims of transnational repression. But we do not improve human rights in China by trampling on the rights of Canadians, even those who do not share the same perspective on say Hong Kong, Tibet, Falun Gong, or Xinjiang.

Inasmuch as there is a risk of FI affecting our elections and Canadian democracy more generally, there is the opposite risk of an overzealous approach to countering FI that damages the very democracy we are trying to defend. And while the Commission rightly heard from members of diaspora communities who feel threatened by FI, it did not hear from other diaspora members, especially Chinese Canadians, who worry that

the rampant speculation around FI in our elections and around who may or may not be a foreign proxy is an ill-disguised effort to suppress their voices and votes.

The Chinese community is not homogenous, and it is difficult to come up with generalizations on what they think or feel, but the dominant impression conveyed during the hearings – that the community is living in fear of repression and coercion by Beijing and is pleading for the Canadian government to take firm corrective action – is a gross distortion of the reality.

Hence the crucial importance of the Commission's mandate to examine "*the supports and protections in place for members of a diaspora who may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes*".

This mandate, however, must be understood not just as the need for protections against the targets of foreign interference, but also as the need to protect diaspora communities from discrimination and stigmatization due to zealotry in combatting FI, to the point of violating the fundamental rights of Canadians.

I hope that this perspective will find its way into the Phase 2 hearings and that the Commission will give serious consideration to witnesses who are concerned about discrimination and stigmatization masquerading as efforts to counter FI. These are real concerns that have so far been given short shrift because of a worrying groupthink around the nature of the FI problem. We even heard comments during the hearings dismissing such concerns on the grounds that they are the talking points of the Chinese Communist Party. And yet, it is precisely this kind of put-down that underscores the danger at hand: Anyone complaining about the risk of discrimination and stigmatization in efforts to fight foreign interference is framed as someone who is repeating the talking points of the very foreign state that is said to be perpetrating FI. It would not take much to then brand that person as a foreign agent or proxy of a foreign state. The great irony is that self-described defenders of human rights would want to credit the Chinese

Communist Party for flagging discrimination and stigmatization in Canada, rather than sounding the alarm themselves.

How did we get here?

It is important to recall the arc of events that has led to the Public Inquiry on Foreign Interference and to analyze how and why we got to where we are. To the extent that the Commission accepts that the elections of 2019 and 2021 were free and fair, and that FI did not materially affect the results either at the riding level or nationally, I hope it will also offer some reflection on the precipitants and accelerants of the national angst around election integrity that brought us to PIFI. It was, after all, media reporting based on leaked classified information from anonymous sources that cast doubt on GE43 and GE44. The swirl of sensational news items, shorn of context, was subsequently amplified by partisans and opportunists to create a climate of public skepticism around earlier attempts to assure Canadians that the election results could in fact be trusted.

To what extent has Canadian democracy and national security been damaged by the leaks and subsequent developments? What lessons can be learned about the leak of piecemeal intelligence from possibly misinformed, disgruntled, or self-aggrandizing officials (and former officials)? What has been done to better protect against such leaks? Why have the leakers not been identified and prosecuted under the applicable laws?

What is the role of the media in soliciting and/or using such leaked information, and what responsibility does it have in considering the adverse consequences of publishing such leaks for democratic trust, civil liberties, foreign relations, and national security? What is the role of the political class in advancing partisan interests while protecting confidence in our elections and democracy more broadly? How can we better equip Canadians to be resilient against mis- and dis-information in the context of robust democratic elections, without resorting to witch-hunts?

I hope the Commission will take up these questions, some of which may be better suited for Phase 2 of the Inquiry. We will, however, not be equipped for a fruitful Phase 2 unless there is clarity in answering the Phase 1 questions. Any equivocation in the findings of the Commission concerning the 2019 and 2021 elections will only serve to undermine the Phase 2 discussion on broader policy implications.

Canadians are looking to the Commission to help restore their trust in our country's democracy. With a fresh election just over a year away, that cannot come too soon. We are rooting for you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. J. ...". The signature is fluid and cursive, with a long horizontal stroke at the end.

